

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Angel LOPEZ, et al.
Title: METHOD OF MODULATING
LEUKEMIC CELL AND
EOSINPHIL ACTIVITY WITH
MONOCLONAL ANTIBODIES
Appl. No.: 10/774,887
Filing Date: 2/9/2004
Patent No.: 7,427,401
Grant Date: 9/23/2008
Examiner: Prema Maria Mertz
Art Unit: 1646
Confirmation Number: 8791

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 9/23/2008 as U.S. Patent No. 7,427,401.

The Patent Office determined that the patent was entitled to 191 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the

PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 460 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 657 days

(b) Total Applicant delay: 197 days

Final PTA Determination: 460 days

Applicants therefore respectfully request that the patent be accorded 460 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date November 12, 2008

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By Courtenay C Brinckerhoff

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Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 029860-0154

Application Number: 10/774887

Patent Number: 7427401

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	02/09/2004	0		
Edit Delete	Preliminary Amendment under 1.704(c)(6) Received at PTO	03/08/2004	28		
	14 month From Application date	04/09/2005	425		
Edit Delete	Restriction Requirement	05/02/2006	813	388	
	Restriction Requirement + 3 months	08/02/2006	905		
Edit Delete	Restriction Requirement Response Received at PTO	08/15/2006	918		13
Edit Delete	Non-Final Office Action	09/27/2006	961		
	Non-Final Office Action + 3 months	12/27/2006	1,052		
	3 Year Period Starts	02/09/2007	1,096		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	03/27/2007	1,142		90
Edit Delete	Final Office Action	05/03/2007	1,179		
CLOSE WINDOW	ALL CASES SELECT CASE Final Office Action + 3 months	08/03/2007	1,271		
Edit Delete	Request For Continued Examination	11/05/2007	1,365		94
	3 Year Period Stopped	11/05/2007	1,365	269	
Edit Delete	Non-Final Office Action	01/15/2008	1,436		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	04/15/2008	1,527		
Edit Delete	Notice of Allowance	05/19/2008	1,561		
Edit Delete	Issue Fee Paid	08/14/2008	1,648		
Edit Delete	Patent Grant Date	09/23/2008	1,688		
Totals:				657	197
PTA:				460	

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IP: 10.14.32.38

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